

Mountainair Public Schools

P.O. Box 456
512 North Ross Avenue
Mountainair, NM 87036

April 20, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

APPEAL – CC Docket No. 02-6

Dear Secretary Dortch,

On behalf of the Mountainair Public Schools, I am filing an appeal on a decision made recently by the Universal Service Administration Company, Schools and Libraries Division against the district. I received a letter from USAC on March 3, 2009 (attachment 10) indicating that an appeal I submitted to USAC was automatically denied. I am now appealing USAC's decision to the FCC on the grounds that an automatic denial is not appropriate because of the absence of a critical letter from the FCC.

This packet of information contains several electronic documents related to my appeal. I will summarize briefly the events and correspondence that occurred-

JANUARY 2009

Demand payment letter received from USAC/SLC (Attachment 1) indicating that a Notification of Commitment letter had previously been sent. In this letter, USAC indicates that the district previously received a Notification of Commitment Adjustment Letter.

Subsequently- I contacted SLD through their site on indicating that Mountainair Public Schools had not received a Commitment Adjustment Letter. See Attachment 2 for documentation of correspondence.

In an e-mail on January 27, 2009, the district finally received the Commitment Adjustment Letter from USAC - Attachment 3. This letter outlines the procedures that the district must follow if they wish to appeal USAC's decision. It also clarifies that we must file an appeal within 60 days of the date of the letter if we choose to appeal. While the letter is dated November 17, 2008, the district did not receive this letter until January 27, 2009. The 60 day window had already passed by the time we received the letter.

FEBRUARY 2009

I contacted the SLD through their helpline for assistance in processing an appeal. I notified the SLD that I had not received the Notification of Commitment Letter in November of 2008 and that I received my first copy of this letter on 1/27/2009. SLD indicated in this conversation that I should file the appeal anyway but that **they would automatically deny the appeal** and that I could then proceed to the FCC. I

questioned this but was informed that this was standard procedure. I believe that this conversation occurred in case # 21-853916.

Another demand payment letter/second request was received from USAC - Attachment 4

I wrote to USAC on February 24, 2009. In this correspondence I indicated to USAC that we were in the process of appealing their decision due to the absence of the Notification of Commitment Adjustment letter - Attachment 5

The district received correspondence from USAC entitled "Notice of Withholding Action" - Attachment 6. This letter indicates that district funding will be dismissed if payment was not made. How can USAC move forward and terminate funding while the district is in the process of an appeal and is following every step outlined by USAC?

On 2/27/2009, the district filed an appeal to USAC. This appeal is in response to the Notification of Commitment Adjustment letter that was received on 1/27/2009. - Attachment 7

USAC provided an electronic Receipt of Appeal. - Attachment 8

USAC provided an acknowledgement of correspondence. - Attachment 9

In a letter dated March 3, 2009, USAC provided an Administrator's Decision on Appeal - Attachment 10. Sure enough, USAC/SLD did exactly what they said they would do - They denied my appeal based on the fact that their records show the appeal was postmarked more than 60 days after the date the Commitment Adjustment Letter was issued.

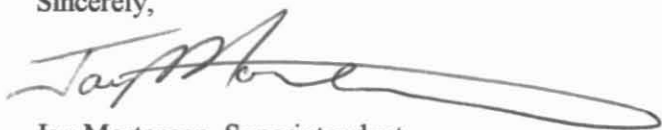
USAC/SLD's automatic denial of our appeal is arbitrary and capricious. Why would USAC deny an appeal based on the date of a letter that was never received? USAC has no documentation or evidence that this appeal was in fact received by the district. It wasn't. Mountainair Public Schools did not receive this Commitment Adjustment Letter until January 27, 2009. Additionally, why would USAC take adverse action against the district while this matter was under appeal?

Mountainair Public Schools has complied with every single request from USAC/SLD. We have followed all procedures and complied with all requests for additional information. An automatic denial of the district's appeal seems punitive and unnecessary. Additionally, we have now been notified by USAC that they have dismissed our e-rate application and will no longer fund the district.

We respectfully request that the FCC find in favor of our appeal so that full funding can be restored and so that the students of the Mountainair Public Schools can benefit from services and programs provided through the E-rate program.

Please contact me if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Mortensen", with a long horizontal flourish extending to the right.

Jay Mortensen, Superintendent
Mountainair Public Schools

cc: Representative Martin Heinrich

Senator Tom Udall
Senator Jeff Bingaman

Demand Payment Letter

Funding Year 2005: 7/01/2005 - 6/30/2006

January 20, 2009

**JAY MORTENSEN
MOUNTAINAIR PUBLIC SCH DIST
512 ROSS AVENUE
MOUNTAINAIR, NM 87036**

**Re: Form 471 Application Number: 466077
Funding Year: 2005
Applicant's Form Identifier: 12121927
Billed Entity Number: 143245
FCC Registration Number: 0014270508
SPIN Name: Harris Technology Services, Inc.
Service Provider Contact Person: Della Harris**

You were previously sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is attached to this letter. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

If the Schools and Libraries Division (SLD) has determined that both the applicant and the service provider are responsible for a program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), the SLD will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If the SLD has determined that both the applicant and the service provider are responsible for a program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If the SLD is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the

debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Applicant" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, IL 60661

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete program information is posted to the SLD section of the USAC web site at www.universalservice.org/sl/. You may also contact the SLD Technical Client Service Bureau by e-mail using the "Submit a Question" link on the SLD web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: Della Harris
Harris Technology Services, Inc.

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

Funding Commitment Adjustment Report**Form 471 Application Number: 466077***Attachment 1, page 4*

Funding Request Number:	1299293
Services Ordered:	INTERNAL CONNECTIONS MNT
SPIN:	143025351
Service Provider Name:	Harris Technology Services, Inc.
Contract Number:	MPSD2005-01
Billing Account Number:	505-847-2333
Site Identifier:	143245
Original Funding Commitment:	\$46,847.31
Commitment Adjustment Amount:	\$46,847.31
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$46,847.31
Funds to be Recovered from Applicant:	\$46,847.31
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review, it was determined that the funds were erroneously committed for the funding request 1299293, which was not justified as cost effective. The FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants' technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1299293 exceeded the applicant's reasonable needs, this funding commitment is rescinded in full and SLD will seek recovery of any disbursed funds from the applicant.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING**

Attachment 2, page 1

Jay Mortensen

From: sldnoreply@sl.universalservice.org
[sldnoreply@sl.universalservice.org]
To: Jay Mortensen
Cc:
Subject: SLD Inquiry #: 21-833283 Received
Attachments:

Sent: Tue 1/27/2009 3:35 PM

Thank you for sending an email inquiry to the SLD. This message serves as a receipt confirmation.

Please note that you may also refer to the SLD website (www.sl.universalservice.org) for program information and view WebEx sessions regarding key E-rate topics, listed below.

Your case number is 21-833283.

Please refer to this number in subsequent contacts with the Client Service Bureau regarding this specific issue. Please do not resubmit this case number if your inquiry pertains to a different issue with respect to the same FRN.

We may need to request additional information from you in order to completely answer your question or fulfill your request.

Here is the information you submitted:

[FirstName]=Jay [LastName]=MORTENSEN [JobTitle]=Superintendent [EmailAddress]=jmortensen@mountainair.k12.nm.us [WorkPhone]=5058472480 [FaxPhone]=5058472843 [PreviousCaseNumber]=0 [FormType]=Appeal [Owner]=TCSB [DateSubmitted]=1/27/2009 5:21:53 PM [AttachmentFlag]=N [ApplicationNumber]=466077 [Question2]=I have a demand payment letter application number - 466077 funding year - 2005 applicant's form identifier 12121927 billed entity - 143245 fcc registration - 0014270508 spin name- harris technology services, inc. service provider contact - della harris This letter references a committment adjustment letter. I have pulled my binders and reviewed my records. I am not able to locate any record of a committment adjustment letter. How do I proceed in the absence of this letter? Jay Mortensen, Superintendent Mountainair Public Schools

PLEASE DO NOT REPLY TO THIS MESSAGE.

IF YOU WISH TO SUBMIT ADDITIONAL INFORMATION, PLEASE DO SO USING THE ASK A QUESTION FORM AVAILABLE ON THE SLD WEBSITE.

SLD TRAINING PRESENTATIONS

SLD Training Presentations are available on the topics listed below at <http://www.sl.universalservice.org/reference/Presentations2004.asp>.

WEBEX RECORDINGS/LIVE SLD TRAINING SESSIONS *Attachment 2, Page 2*

Recorded sessions on key SLD topics are now available on the SLD's WebEx site at universalservice.webex.com. Click on the Recorded Sessions tab under the Attend a Session link to view the available recordings. To view a session, you must register by providing certain information. This information will assist the SLD to better understand how the site is being accessed and to design new training sessions that will be helpful to users.

In addition, you may also register for live WebEx recordings by going to universalservice.webex.com and clicking on Live Sessions under the Attend a Session Tab and then clicking on the Upcoming tab. Please see instructions below for registering for a live session.

The following topics are currently available:

- General Updates/New Initiatives
- Technology Planning
- Form 470 Changes
- Competitive Bidding
- Program Compliance
- Service Provider Perspective
- Form 471 Changes
- Eligible Services
- Miscellaneous PIA Updates
- Audits
- Invoicing
- Appeals
- Commitment Adjustments

[Follow this link to learn how to register to view a recording.](#) [PDF, 714kb]

[Follow this link to learn how to register to log into a live Training Session.](#) [PDF, 312kb]

[Follow this link to the SLD's WebEx site](#)